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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 ERIC MICHAEL ROSEMAN,  
4 ALEXANDER LEE, and WILLIAM VAN  
5 VLEET, individually and on  
6 behalf of others similarly  
7 situated,

8 Plaintiffs,

9 v.

10 14 CV 2657 (DLC)

11 BLOOMBERG L.P.,

12 Defendant.

13 -----x  
14 New York, N.Y.  
15 October 15, 2018  
16 5:00 p.m.

17 Before:

18 HON. DENISE COTE,

19 District Judge

20 APPEARANCES

21 GETMAN SWEENEY & DUNN PLLC  
22 Attorneys for Plaintiffs  
23 BY: DAN GETMAN  
24 LESLEY TSE  
25 MEAGAN RAFFERTY

JONES DAY  
Attorneys for Defendant  
BY: TERRI L. CHASE  
MICHAEL A. CASERTANO

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, for the plaintiffs, please  
3 state your name for the record.

4 MR. GETMAN: Dan Getman, with Getman Sweeney & Dunn,  
5 for the plaintiffs.

6 MS. TSE: Leslie Tse, with Getman Sweeney & Dunn, for  
7 the plaintiffs.

8 MS. RAFFERTY: Meagan Rafferty, from Getman Sweeney &  
9 Dunn, for the plaintiffs.

10 THE DEPUTY CLERK: Thank you.

11 And for the defendant?

12 MS. CHASE: Terri Chase, from Jones Day, for the  
13 defendant.

14 MR. CASERTANO: Michael Casertano, from Jones Day, for  
15 the defendant.

16 THE COURT: Welcome, everyone. This is the fairness  
17 hearing.

18 Is there anyone here who seeks to participate in  
19 today's hearing by making a statement to the Court?

20 No? Not hearing any response, I have a series of  
21 motions. They include: A request for approval of a request  
22 for attorneys' fees; the review of the fairness, adequacy and  
23 reasonableness of the settlement; and also a request for  
24 approval of awards, service awards, to members of the class  
25 serving as plaintiffs.

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1           Let's deal with the issue of settlement's fairness  
2 first.

3           I reviewed this with care at the time of the  
4 preliminary approval process. This was a settlement reached  
5 with the assistance of a magistrate judge of this court, Judge  
6 Aaron, after a failure of a series of settlement discussions  
7 with a privately retained mediator. It's a review here of both  
8 settlement of the class action and, of course, any settlement  
9 in the FLSA case.

10           I'm prepared to rule, but I'll hear from any counsel  
11 briefly if you'd like to make a further statement.

12           MR. GETMAN: Your Honor, I don't need to belabor this.  
13 I think our submissions were thorough. If there are any issues  
14 your Honor would particularly like us to address or where you  
15 think there's something specific that would be useful to you, I  
16 would be happy to do that.

17           I believe you know that there were no objections.  
18 With a class of over 1500 people, not one person objected.  
19 Parenthetically, several of the folks who opted out asked to  
20 opt back in. That was not an option that was available to them  
21 in that context, but the point being, I think this is a very  
22 favorable settlement. We were at a well advanced stage at the  
23 point that the settlement agreement was reached. The parties  
24 knew, I think quite well, what the risks were, including appeal  
25 risks and time risks, in terms of when any amounts would be

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1 paid if the case were to go forward without a settlement  
2 agreement.

3 So we were really at a position of, I think, as  
4 complete a knowledge as we could have about what risks we had  
5 on where the jury might come out on the different questions.  
6 This was very carefully considered, very hard-fought, to get to  
7 a point where both sides could say yes to the settlement  
8 agreement, recognizing the litigation risk issues that existed  
9 for us and for the defendant.

10 So, with that said, I think the most important thing  
11 at this point was thorough notice, thorough reach of the  
12 notice, very few people that didn't get a notice, and of those,  
13 not one did even an informal objection.

14 THE COURT: Thank you.

15 Ms. Chase, is there anything you wish to add?

16 MS. CHASE: Nothing, your Honor.

17 THE COURT: Thank you.

18 Of course, I need to address the Grinnell factors.

19 This is a settlement of \$54,500,000 in connection with  
20 a position at Bloomberg that I'll describe as analytics desk  
21 representatives.

22 The first issue is the complexity, expense and likely  
23 duration of the litigation. While this was complex litigation  
24 insofar as it addresses labor law issues, it was very expensive  
25 for both the plaintiffs and the defendant. It was settled

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1 during the trial, after the plaintiffs rested. There were 16  
2 witnesses who had testified. As I mentioned, this was settled  
3 with the assistance of Magistrate Judge Aaron at that point.

4 Needless to say, all discovery had been taken; summary  
5 judgment motion practice, motions in limine had all been  
6 addressed. This lawsuit had been filed in 2014, so it had been  
7 pending a number of years.

8 The second issue is the reaction of the class to the  
9 settlement. As counsel mentioned, there were no objections.  
10 There had been ultimately about 30 opt-ins to the collective  
11 action. There were close to 1500 class members. At an early  
12 stage in 2018, there were 62 people who had opted out. This  
13 was a very sophisticated class. These were educated people --  
14 all had college degrees, some more than that -- some had work  
15 experience working at a job that required skill.

16 The third factor is the stage of the proceedings and  
17 the amount of discovery completed. I've already covered that.

18 The fourth factor is the risk of establishing  
19 liability. I think there were significant risks here, with  
20 respect to certain issues at least. The defense was, among  
21 other things, that there was a clear mutual understanding  
22 between Bloomberg and its employees that the salary they  
23 received would cover all hours worked. There were also risks  
24 with respect to the number of hours of overtime that the  
25 plaintiffs would be able to show at trial and convince a jury

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1 should be appropriately found by them.

2           The fifth factor is the risks of establishing damages.  
3 For the reasons I've just addressed, these were significant as  
4 well; particularly, the number of hours worked outside of what  
5 we call badge hours, that is, the hours between badging in and  
6 badging out of the office location. The plaintiffs asked for  
7 ten overtime hours in addition to badge hours or any overtime  
8 hours included in the badge hours, and they had a significant  
9 risk of failing to establish that.

10           The sixth factor is the risks of maintaining a class  
11 action through trial. I believe that was very small.

12           The seventh factor is the ability of the defendants to  
13 withstand a greater judgment. They could easily have withstood  
14 a greater judgment.

15           The eighth factor is the range of reasonableness of  
16 the settlement fund in light of the best possible recovery.  
17 The plaintiffs calculate that this is a recovery of roughly  
18 34 percent of their best possible recovery. I calculate,  
19 roughly, that it is 50 percent of the award that they sought  
20 before liquidated damages were assessed. The plaintiffs  
21 calculated, at least at one point, roughly \$92 million before  
22 liquidated damages if a jury returned a finding largely in the  
23 plaintiffs' favor, including ten hours of overtime work in  
24 addition to the badge hours.

25           The last factor is the range of reasonableness of the

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1 settlement fund to a possible recovery in light of all the  
2 attendant risks of litigation. I think it's good. I think  
3 it's strong. I think it's a favorable settlement for the class  
4 when all these factors are considered.

5 So I approve the settlement here.

6 The next motion to address is the motion for service  
7 awards. It is not my practice to give service awards. I think  
8 there are strong policy reasons against them. After all,  
9 certainly, when it comes to the named plaintiffs, they have to  
10 be representatives of the class, and in reviewing whether or  
11 not a settlement amount is fair, adequate and reasonable for  
12 all of the class members, they should have no special benefit  
13 that they will receive, and they shouldn't be motivated at all  
14 by the desire to receive extra money for just themselves. So  
15 that's my general practice.

16 Here, however, I am inclined to give service awards.  
17 There's no basis to find that this is a collusive settlement.  
18 It is hard-fought litigation, hard-fought right up until the  
19 end. We were in the middle of trial or more than halfway  
20 through the trial. It had failed to settle despite best  
21 efforts of the mediator on numerous occasions, and only through  
22 the assistance of a skillful magistrate judge was this  
23 settlement reached.

24 This is a class in which the named plaintiffs and  
25 those who actively participated with plaintiffs' counsel in

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1 pursuit of the trial, either by testifying or being ready to  
2 testify, faced both employment and reputational risk, which  
3 doesn't always appear in a case.

4 The service awards will also compensate those who  
5 spent their time and energy, and in some cases had to travel,  
6 to participate in this litigation; and, therefore, I will  
7 approve in full the request for the service awards.

8 The final motion here is a motion for an award of  
9 attorneys' fees. Again, I've read the papers, I'm prepared to  
10 rule, but, counsel, if there's anything you want to say  
11 briefly, I'll hear you.

12 MR. GETMAN: I believe everything is in our papers,  
13 your Honor. If there's anything you have questions about, I'd  
14 be happy to answer.

15 THE COURT: Thank you.

16 This case was conducted before two different district  
17 court judges and before a magistrate judge, over the course of  
18 roughly four and a half years. There were over 5,000 attorneys  
19 hours and paralegal time expended. Plaintiffs' firm is a small  
20 firm, and four of its seven attorneys participated in the  
21 trial.

22 I reviewed the layout, however, of the individual time  
23 expended by each of the attorneys, data analysts, and  
24 paralegals, and found that the work was properly organized and  
25 divided among those professionals. The bulk of the legal work



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1 was done by three lawyers, with one lawyer responsible for the  
2 largest number of hours. There was one paralegal and one data  
3 analyst, who also spent a far larger amount of time than anyone  
4 else in those occupations on the case.

5 The second factor I'm supposed to consider is the  
6 magnitude and complexity of the litigation. I've already  
7 addressed that. The litigation was complex and demanding.

8 The risk of litigation: While this was a  
9 contingent-fee lawsuit, the risks from the litigation were  
10 moderate to significant in terms of at least any substantial  
11 recovery.

12 The quality of representation for the class was  
13 excellent. It was a well litigated case and well tried case at  
14 trial.

15 The requested fee in relationship to the settlement is  
16 the next factor. There's a request here for 25 percent of the  
17 recovery, plus an amount in expenses. So there's a request of  
18 \$13,625,000 in attorneys' fees and 149,000 in expenses. As  
19 again discussed in connection with the earlier motion, this  
20 request was described generally in the notice given to the  
21 class and the papers provided to the class, and there has been  
22 no objection. And I think the class, rightly, again, is a  
23 sophisticated class, and has concluded that but for able,  
24 dedicated counsel, they would have seen no recovery. So  
25 counsel is entitled to what is a generous award here.

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1           Public policy considerations: Well, labor laws are  
2 absolutely foundational here in our democracy. It's important  
3 that they're abided by. It's important that issues of  
4 compliance are litigated. It's important that there be well  
5 qualified counsel doing that, for both the plaintiffs and the  
6 defendants. Therefore, there's a strong public policy in  
7 support of giving appropriate compensation to plaintiffs'  
8 counsel, who have taken the case on a contingent-fee basis and  
9 borne the costs of that litigation for years.

10           Looking at the lodestar method: This request reflects  
11 a multiplier of roughly 3.3, and, as I've mentioned, I thought  
12 the case was well organized, with the bulk of the work being  
13 done by three lawyers, one paralegal and one data analyst. The  
14 lodestar is something over 4 million, and so this multiplier is  
15 generous but within the range of reasonableness; and,  
16 therefore, I approve the award of attorneys' fees and expenses,  
17 as requested.

18           The expenses were just under 150,000. And I've looked  
19 at the backup support for those categories, including for the  
20 consultant. I've satisfied myself that the expenses, in the  
21 context of this kind of litigation, were reasonable.

22           Is there anything else I need to do, Mr. Getman?

23           MR. GETMAN: No, your Honor. I thank you very much  
24 for those kind words.

25           THE COURT: Yes.

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1 Ms. Chase?

2 MS. CHASE: Nothing else, your Honor.

3 THE COURT: I mean, the case was just terribly well  
4 done, it was hard-fought at every point, as it should be, and  
5 yet even though counsel were suitably aggressive, you were  
6 always respectful of the process, and it's a real pleasure for  
7 me to preside over it, and I want to thank you all.

8 MR. GETMAN: Thank you, your Honor.

9 MS. CHASE: Thank you, your Honor.

10 MR. GETMAN: On the other side, your Honor, it makes  
11 our job, which is so hard, such a different experience to do it  
12 before a judge who's just running such an organized, efficient,  
13 completely fair courtroom, so thank you.

14 THE COURT: Thank you.

15 MS. CHASE: Thank you, your Honor.

16 \* \* \*